makes teste of the Chief Justice indispensable,* and we have no power to change its requirements.

On both grounds, therefore, the writ of error must be

DISMISSED.

PENNSYLVANIA COLLEGE CASES.

The legislature of Pennsylvania chartered a college "at Canonsburg," by the name of the Jefferson College, "*in* Canonsburg," giving to it a constitution and declaring that the same should "be and remain the inviolable constitution of the said college forever," and should not be "altered or alterable by any ordinance or law of the said trustees or in any other manner than by an act of the legislature" of Pennsylvania. The college becoming in need of funds put into operation a plan of endowment whereby in virtue of different specific sums named, different sorts of scholarships were created; one, *ex. gr.*, by which on paying $400 a subscriber became entitled to a perpetual scholarship, capable of being sold or bequeathed; and another by which, on payment of $1200, he became entitled to a perpetual scholarship entitling a student to tuition, room-rent, and boarding; this sort of scholarship being capable, by the terms of the subscription, of being disposed of as other property. But nothing was specified in this plan as to where this education, under the scholarships, was to be. On payment of the different subscriptions, certificates were issued by the college, certifying that A. B. had paid $——, which entitled him "to a scholarship as specified in the plan of endowment adopted by the trustees of Jefferson College, Canonsburg," &c. An act of legislature, in 1865, by consent of the trustees of the college at Canonsburg and of the trustees of another college at Washington, Pennsylvania, seven miles from Canonsburg, created a new corporation, consolidating the two corporations, vesting the funds of each in the new one, and in their separate form making them to cease, but providing that all the several liabilities of each, including the scholarships, should be assumed and discharged without diminution or abatement by the new corporation. Notwithstanding the act of Assembly, the collegiate buildings, &c., of Jefferson College were left at Canonsburg, and certain parts of the collegiate course were still pursued there; the residue being pursued at Washington College, Washington. Subsequently, in 1869—the then existing Constitution of Pennsylvania (one adopted in 1857, allowing the legislature of the State "to alter, revoke, or annul any charter of incorporation thereafter granted, whenever in their opinion it may be injurious to the citizens, . . . in such

* 1 Stat. at Large, 93.

manner, however, that no injustice shall be done to the *corporators*") being in force—a supplement to this act of 1865 was passed, "closely uniting" the several departments of the new college created by the act of 1865, and authorizing the trustees of it to locate them either at Canonsburg, Washington, or some other suitable place within the Commonwealth; they giving to whichever of the two towns named, had the college taken away from it, or to both if it was taken away from both, an academy, normal school, or other institution of a grade lower than a college, with some property of the college for its use. *Held*, that the legislature of Pennsylvania, by its act of 1869, had not passed any law violating the obligation of a contract.

ERROR in three different suits to the Supreme Court of Pennsylvania, there and here, argued and adjudged together; the case being thus:

On the 15th of January, 1802, the legislature of Pennsylvania incorporated a college in the western part of Pennsylvania known as Jefferson College. The title of the act was, "An act for the establishment of a college *at Canonsburg*, in the county of Washington, in the Commonwealth of Pennsylvania."

The preamble set forth that "the establishment of a college *at Canonsburg*," &c., "for the instruction of youth in the learned languages, in the arts and sciences, and in useful literature, would tend to diffuse information and promote the public good." The statute in its enacting part proceeded:

"SECTION 1. That there be erected and hereby is erected and *established in Canonsburg*, &c., a college, &c., under the management, direction, and government of a number of trustees, not exceeding twenty-one," &c.

"SECTION 2. The said trustees and their successors shall *forever hereafter be* one body politic and corporate, with *perpetual succession* in deed and in law, to all intents and purposes whatever, by the name, style, and title of 'The Trustees of Jefferson College, *in Canonsburg*, in the county of Washington.'"

There was given to the trustees the usual corporate powers, with all other powers, &c., usual in other colleges in the United States.

Section 3d provided for meetings of the trustees, "*at the*

town of Canonsburg," for making by-laws and ordinances for the government of the college, &c., principal and professors, &c.

Section 5th provided for the succession in the trustees, how misnomers in gifts or grants by deeds, or in devises or bequests, should be treated; adding,

"And the constitution of the said college herein and hereby declared and established, *shall be and remain the inviolable constitution of the said college forever*, and the same shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner than by an act of the legislature of this Commonwealth."

In pursuance of this act the Jefferson College was established. Several buildings for a college were erected. The State made donations to the institution from time to time, and from these or other sources a library, as also a chemical and astronomical apparatus, was brought together.

In the year 1806, the same legislature incorporated another college, establishing it at the town of Washington, just seven miles from Canonsburg, where the former college had been established. Thus, although in the faculties of both colleges there have been from time to time professors of eminent ability and learning, and though from both colleges have come men who have done honor to the institutions in which they were reared, it yet came to pass—with the multiplicity of colleges throughout the State—that these two, so near to each other, slenderly endowed, and in a part of Pennsylvania until quite late times neither rich nor populous, never thrived; on the contrary, rather labored with existence. Accordingly, in 1853, the trustees of Jefferson College put into operation a plan of endowment whereby on the payment of $25 the subscriber to the plan became entitled to a single scholarship; on the payment of $50 to a family scholarship; on the payment of $100 to tuition for thirty years; on the payment of $400 to a perpetual scholarship, to be designated by whatever name the subscriber might select; it being provided that such a scholarship might be disposed of by sale or devised by will as any other

property; by the payment of $1200 to a scholarship in full, entitling the holder to the tuition, room-rent, and boarding of one student in perpetuity; it being provided that such a scholarship might be disposed of as any other property. But in this "Plan of Endowment," as the paper proposing it was called, nothing was said of education at Canonsburg specifically, though it was declared that when $60,000 were subscribed "the trustees of the college should issue certificates guaranteeing to the subscribers the privileges above enumerated." Of these various scholarships upwards of 1500 were sold. To each of the subscribers to this plan of endowment a certificate in this form was issued under the seal of the corporation:

"*Endowment Fund of Jefferson College, Pennsylvania.*

"This certifies that A. B. has paid —— dollars, which entitles him to the privileges of a —— scholarship, as specified in the Plan of Endowment adopted by the trustees of Jefferson College, *in Canonsburg*, in the county of Washington, transferable only on the books of the college, personally or by attorney, on presentation of this certificate.

"Witness the seal of said corporation and the signatures of the president and secretary thereof, *at Canonsburg*, the —— day of ——, A.D. 185 .

"WILLIAM JEFFREY,
President.

[CORPORATE SEAL.] "JAMES MCCULLOUGH,
Secretary."

But this scheme did not prove an entirely wise one; for though it procured a certain amount of money for an endowment fund, it brought upon the college a large body of students to be educated at rates entirely too low, and the college was deprived of its former resources of tuition fees; always very small, but still much greater than the interest on the sum which now entitled a student, and even a whole family of students, to be educated, without paying anything. Thus it was with the Jefferson College, at Canonsburg. The other college, at Washington, adopted apparently some similar

scheme and flourished no more than the Jefferson. Both colleges during the rebellion fell into a condition of debility undesirable for seats of learning.*

In this state of things, there having been a proposition to make a union of the colleges, a convention of the alumni of both was held at Pittsburg, September 27th, 1864, and the members of this convention having "discussed in a candid and fraternal spirit the proposed union of the colleges," passed a series of resolutions, of which this was the first:

"That we see the hand of Providence pointing to the union of the two ancient colleges, whose sons we are, and fixing the present as the time for the happy consummation by such evident facts as these: The great and constantly increasing number of literary institutions in the land; the urgent need in Western Pennsylvania of an eminently influential and richly endowed college; the desire for a union of Jefferson and Washington, so generally entertained, and so frequently and earnestly expressed; the proximity of the said colleges, soon to be made more apparent by the completion of a connecting railway; the very unsatisfactory condition of their antiquated buildings; the reduced number of students, partly the result of our national troubles; the inadequacy of the old salaries to meet the demands of the times and afford the professors a competent support; the difficulty of obtaining aid for either institution in its separate existence; the several offers made by liberal and reliable men to furnish large amounts of funds in case a union is effected, and depending also upon that event; the probable donation by our legislature of a valuable grant of lands given by Congress to the State for the advancement of agricultural knowledge."

The convention then went on and recommended a plan of

* The net endowment of the institution in 1865, from all sources, was about $56,100. The income of this fund, at 6 per cent., equal to $3366, aided by contingent, matriculation, and diploma fees, amounting together to about $1111 per annum, composed the resources of Jefferson College, the scholarships issued by it having cut off the revenue from tuition. The annual expenditures of the institution were in excess of its income, although the cash salary of the president was only $1200 and the highest salary paid to a professor was $800.

union for the two colleges and the procuring of appropriate legislation to effect the consolidation.

The matter in its general aspect was assented to by the boards of trustees of the respective colleges, and in the following year, March 4th, 1865, an act was passed by the legislature of Pennsylvania to carry out a union.

The title of the act was, "An act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation, under the name of Washington and Jefferson College."

Its *preamble* recites that "the trustees of those colleges (Jefferson and Washington) *have agreed upon a union* thereof, and have besought this General Assembly to *give thereto* the sanction and aid of a legislative enactment."

Section 1 united the two colleges into one corporation by the name aforesaid.

Section 2 vested all the property and funds of each in the new corporation, "and all the several liabilities of said two colleges or corporations, by either of them suffered or created, *including the scholarships heretofore granted by, and now obligatory upon each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same without diminution or abatement.*"

Section 3 declared the objects of the corporation and provided how the trustees were to be selected and continued, and prescribed their powers and duties.

Section 10 directed that there should be four periods or classes of study, denominated the freshman, sophomore, junior, and senior classes.

Section 11 created two additional departments of study, the scientific and preparatory; the first to qualify students for business avocations, the second for admission to the first, or to the freshman class of the college.

Section 12 provided prospectively for an agricultural department.

Section 13 declared "that the studies of the senior, junior, and sophomore classes shall be pursued at or near *Canonsburg*, in the county of Washington, and those of the fresh-

man class and of the preparatory, scientific, and agricultural departments at or near *Washington*, in said county," and provided how the income of endowment funds should be apportioned, &c.

Section 14 committed the instruction and government of the three higher classes named, to the president and professors of those classes, and the instruction and government of the freshman class and the departments, to the vice-president and professors, or instructors of their appropriate studies, &c.

Section 18 enacted:

"That from and after the organization of the corporation hereby created, as herein provided, *the colleges of Jefferson and Washington*, named in the first section of the act, *shall be dissolved*, except so far as may be found necessary to enable them to close up their business affairs and to perfect the transfer of their property and rights to the corporation by this act created."

When this new act was passed (A. D. 1865), the then existing or amended constitution of Pennsylvania,* adopted in 1857, was in force. That constitution provided that:

"The legislature shall have power to *alter, revoke, or annul any charter of incorporation hereafter conferred by or under any special or general law*, whenever, in their opinion, it may be injurious to the citizens of the Commonwealth; in such manner, however, that no injustice shall be done to the *corporators*."

Under the act of Assembly of 1865, a new state of things as prescribed by it was set in operation. But the good effects anticipated from a union on this plan did not come. The new college did not thrive. And in 1868 another convention of alumni was held, in which various resolutions were passed, among them one expressing "the conviction of the convention that a *complete consolidation* of the two departments should be immediately effected, so as to have them occupy buildings situated in *the same place*." And in consequence of this the board of trustees of the college,

* Article 1, § 26.

through a series of committees, took the matter into consideration, the result of the whole being the recommendation of further legislation, in the direction pointed out by the convention of the alumni.

"A supplement" to the act of March 4th, 1865, was then, February 26th, 1869, passed. Section 1st enacted "that as soon as the necessary preliminary arrangements could be made and suitable buildings provided, the *several departments* of Washington and Jefferson College should be closely united, and located either at Canonsburg, Washington, or some *other* suitable place *within this commonwealth*, to be fixed by the vote of not less than two-thirds of the trustees," &c.

Section 5 provided for an "academy, normal school, or other institution of lower grade than a college," to be given by the trustees to the unsuccessful one of the two places named, or to both, if the college is taken "elsewhere," with some real or personal property of the college for the use of such academy, &c.

Section 6 made it "lawful for *any* incorporated college or institution of learning, within this commonwealth, to unite with Washington and Jefferson College, and consolidate their property and funds for educational purposes, on such terms and conditions as may be agreed upon."

With the exception that this act obliged the college to be fixed somewhere in the State of Pennsylvania, it followed the exact language of a draft which had been prepared by the committee of the board of trustees of the college, and reported to it as advisable. This draft had been approved without dissent by the board, twenty-five members out of thirty-one composing it being present at the meeting; and a committee had been appointed by it to visit Harrisburg and procure its enactment.

After the supplement was obtained it was accepted by the board, and the whole college fixed at Washington, with more effective means of education, including an endowment of $50,000, made by people of that place on condition that the whole college should be so fixed.

In this state of things, six persons (with whom afterwards

one hundred and eight others asked to become, and were admitted, co-plaintiffs), holders of the scholarship certificates, issued as already mentioned by the trustees of Jefferson College, in 1853, filed a bill in equity, in the Supreme Court of Pennsylvania, against *the two corporations*, wherein they set forth the incorporation of Jefferson College at Canonsburg, the buildings it had erected, and the gifts and endowments which it had received and possessed; that in 1853, the trustees of the college devised and put in operation the plan of endowment already mentioned, and evidenced by certificates of scholarship, issued by them, under the corporate seal, &c.; whereby, tuition, &c., in said college, was granted to the holders, they paying into the corporate treasury therefor various sums of money, according to the grade or quantity of the scholarship, specifying it all as already stated on page 192; that one thousand five hundred of these certificates were issued, of which one thousand two hundred were yet outstanding; that the complainants, "residents of Canonsburg and its vicinity, relying upon the good faith of the said trustees, and the perpetuity of said college at Canonsburg, bought and still held such certificates of scholarships, believing that thereby they could have their sons or descendants educated at said college, in Canonsburg, without the expense and risk of sending them from home;" that on March 4th, 1865, the legislature of Pennsylvania passed the act already mentioned as of that date (reciting it), and on the 26th of February, 1869, "a supplement" to the said act of 1865 (reciting the supplement); that the trustees of Jefferson College in Canonsburg, &c., had accepted the said act of 1865, and had joined in uniting said two colleges, and had removed the freshmen class and the preparatory and scientific departments from Canonsburg to Washington, seven miles distant; and that the trustees of the college called "Washington and Jefferson College," formed under the act of 1865, were about to remove the college library, apparatus, classes, and professors from Canonsburg to Washington, and to dispose of the college buildings, &c., at Canonsburg, so as to deprive the plaintiffs of the tuition, &c., agreed to be

there given to them; and that the defendants justified the proposed action, under the supplement of 1869; that the said scholarship certificates constituted subsisting *contracts* between the complainants and the trustees of Jefferson College, in Canonsburg, &c., entitling them to have the granted tuition, &c., at that place, in the college there; and that if said acts of 1865 and 1869 were to have effect, they would be irreparably injured, and the contracts impaired; that said acts of 1865 and 1869 were invalid and unconstitutional, because impairing the obligations of subsisting contracts; and therefore repugnant to the 10th section of the first article of the Constitution of the United States, which declares that no State shall pass any law "impairing the obligation of contracts."

The *prayer* of the bill accordingly was:

1. That said acts of 1865 and 1869 be declared null and void, as repugnant to the said prohibitions, in that they undertook to change the location of the said college, its classes, buildings, and property, from Canonsburg to Washington, or elsewhere.

2. For injunction against making such change or removal.

The case came up on bill and answer. There was no dispute about facts. The question was the validity of the "supplemental" act of 1869; the question, namely, whether the contract of scholarships between the complainants and others and Jefferson College, did not interpose a constitutional barrier to any legislative grant of authority to the trustees of the college to surrender its former charter and accept a new one, by which the college was eventually removed from Canonsburg to Washington, in the same county.

At the same time was filed in the same court another bill; one by "the trustees of *Jefferson College in Canonsburg, in the county of Washington*" (the old corporation of 1802), against "Washington and Jefferson College" (the corporation of 1865), setting out their old charter of 1802, gifts and donations to carry *it* out, and specially $5000 given, bequeathed by benevolent persons to the complainants as a permanent fund, to be kept separate from other funds, for educating

poor and pious young men; the scholarships, &c., all, much as in the preceding case.

There was also filed a third bill by five persons, "members of the boards of *trustees of Washington and Jefferson.*" Their complaint being more especially of the supplement of 1869, and of its impairing the obligation of the contracts raised by the act of 1865. All three bills originated apparently in one view, and had apparently one purpose, the different forms of effort being resorted to, the one in aid of the other; and so that if one form of proceeding was found open to fatal objection, one or both of the others might be resorted to with better prospect of success.

The Supreme Court of Pennsylvania, after a full consideration of the case (Thompson, C. J., delivering its judgment), dismissed all the bills, holding in effect:

1st. That the legislation complained of did not, in point of fact, infringe the said contracts.

2d. That even if the contracts were so affected by the legislation, yet their obligation could not be said to be impaired in a legal sense, because the acceptance of the legislation by the trustees of Jefferson College concluded the complainants; and, also, 3d, because the acts of Assembly in question were passed by the legislature of Pennsylvania, in the exercise of a power so to do, reserved (as to the act of 1865) in the original charter of Jefferson College and (as to the act of 1869) given by the amended constitution of Pennylvania.

Messrs. G. W. Woodward, G. Shiras, J. Veech, and B. Crumine, for the plaintiffs in error:

The three cases may be here, as they have been elsewhere, treated as one. We proceed to discuss the principles meant to be presented, without embarrassing ourselves or the court with that which is the mere accident, outwork, and mechanism of the cases.

And we select as the case which best presents our views, the first one; that one in which the bill is filed by the holders of the scholarships.

Argument for the holders of the scholarships.

By clear and necessary implication arising from the whole transaction, and visible in the certificate given in the matter, Canonsburg is recognized as the place where the education was to be given. The *title* of the original act is, "An act for the establishment of a college at Canonsburg." The *preamble* recited that "the establishment of a college at Canonsburg would promote the public good." "The trustees and their successors, it is enacted, shall forever thereafter be one body politic and corporate, with perpetual succession, by the name of 'The Trustees of Jefferson College, in Canonsburg.'" Pursuant to this charter an institution had been established and had flourished for half a century, when the trustees devised a plan of endowment, and induced the complainants to become contributors thereto by the purchase of scholarships.

Of the 1500 scholarships sold, several hundred were bought and are held by residents of Canonsburg. All the 114 complainants are of this class. What did the contributors expect at the time the contracts were made? What did the trustees *know* that they expected? And what did the trustees themselves intend? What, in short, did all parties mean? Certainly to get the tuition from Jefferson College, at Canonsburg; from that college, *permanently* fixed there. A college is not an ambulatory institution, but a stationary one.

It is unimportant that the place of performance may have been but *implied.* Implied contracts are as much within the protection of the Constitution as express ones.

Now the place of performance in such contracts as contracts for education at a particular place is an essential part of the contract. In this case the subscriptions were largely by the people of Canonsburg, who wished to have their sons instructed without the cost and without that exposure to perils which come from sending them away from home. When you compel them to send their sons away the contract is worthless.

In *Daily* v. *The Genesee College*,* in the Supreme Court of

* Not yet in the published reports.

Argument for the holders of the scholarships.

New York, Genesee College had been incorporated in 1849, and buildings erected at Lima, Livingston County, New York; scholarships were issued by the institution, and subscribed and paid for by the plaintiffs; subsequently, under an offer of $200,000 from the Conference of the Methodist Church, at Syracuse, New York, the trustees of the college resolved to abandon Lima and remove the college to Syracuse, and applied for an act of Assembly to authorize the removal. At that juncture a bill was filed by some of the scholarship holders, and an injunction asked for and obtained, restraining the defendants from the removal of the college. The ground upon which the injunction was put was, that in the case of a scholarship issued by a college having an established location, the *place where the tuition is to be given is an essential part of the contract.* Says Johnson, J., in his opinion granting the injunction:

"It is plain that neither party had any other place in contemplation, and that must of necessity have been the place agreed upon, as definitely and certainly as though it had been specified in the most exact and unequivocal terms in the certificate. The place of performance, in this as in all other contracts, is a material part of such contract, *and the obligation can neither be satisfied nor discharged by tender of performance at another place.*"

Suppose the trustees of Jefferson College, without having procured any legislative authority, had refused to furnish tuition at Canonsburg to the holders of scholarships, but had tendered performance in Massachusetts, Louisiana, or California, would not such conduct have been a breach of their contract? If so, is not the same conduct, when done under guise of legislative authority, equally a breach of contract, if so be that the legislature have no valid power to authorize such a departure from the obvious intent of the contract?

Then, are the holders of the scholarship contracts in any way estopped because of the act of the trustees of Jefferson College in accepting the act of 1865?

The parties to the contract in question are the trustees of

Jefferson College (the grantors), and the subscribers to the plan of endowment (the grantees named in the several scholarships). Now it is a strange state of the law, if one of the said parties, the trustees, can, by a voluntary dissolution—one not brought about by legal proceedings to forfeit for some abuse, but brought about by their own act of *procuring and accepting* an act of Assembly dissolving the corporation—escape from the obligations of their contracts.

Admitting the general rule to be that a private corporation may surrender its franchises, yet it cannot be successfully invoked by the defendants, because the trustees of Jefferson College were mere trustees, and not owners of the college fund; their powers extended to its preservation and proper application, but not to consenting to its withdrawal from the existing beneficiaries. This corporation is an eleemosynary one; and the difference between this class of corporations and corporations for gain is obvious and well settled. The latter to a large degree may do what they please. They have no interests to consult but those of their corporators. Those interests will prevent their abusing their trusts. But eleemosynary corporations are trustees of a sacred trust. For the most part they are managing the property of the departed. They are bound to respect in the highest degree the objects and directions declared by their founders and benefactors. They cannot surrender their franchises at pleasure.

The case of *State* v. *Adams** is in point. By the charter of "St. Charles College," it was required to be "an institution purely literary, affording instruction in ancient and modern languages, the sciences and liberal arts, and not including or supporting by its funds any department for instruction in systematic or polemic theology." An amendment of the charter, approved February 6th, 1847, provided that "the concurrence of the Missouri Annual Conference of the Methodist Episcopal Church South," should be requisite in filling all vacancies in the board. *Held*, that the amendment, by requiring the concurrence in the choice of curators,

* 44 Missouri, 570.

of an ecclesiastical body representing one of the religious denominations of the State, endangered, in this regard, the principles of the foundation; and, even if it did not, it changed the character of the administration of the trust, hindered the free choice of their successors, according to the will of the founder, by the men to whom he had intrusted his bounty, and essentially impaired the contract upon which he advanced it. *Held*, further, that the curators, or trustees, of an eleemosynary institution have no power over the charter, but on the contrary it is their creator and their absolute rule of conduct; that the beneficial interest in the college fund belongs neither to them nor the State, but to the beneficiaries only, who, from the nature of the case, cannot consent to any changes in the charter; *that hence its essential conditions are permanent, so far as change depends upon consent, and the acceptance of a legislative amendment to the charter of such an institution by the board of curators gives it no validity.*

The inability to make any improper legislative change is recognized also in *Allen* v. *McKeen.**

Indeed the provision in the 5th section of the original charter of Jefferson College, that the constitution of the college shall be and remain the inviolable constitution of the said college forever, and the same shall not "be altered or alterable by any ordinance or law of the said trustees," disabled the trustees from assisting in the destruction of the subject of their trust.

Admitting then, as we think it must be admitted, that the proposed changes in name, character, and location of the college, disregard what was meant to be the contract, and that the consent of the board of trustees to the act of 1865 cannot validate it, can that act be sustained as a valid exercise by the legislature of the powers reserved in the 5th section of the original charter of 1802, declaring that the constitution of the college "shall not be *altered*" in any other manner than by an act of the legislature of this Commonwealth.

1. The provision does not confer upon or reserve to the

* 1 Sumner, 300.

legislature the power to revoke and resume the franchises granted by the act of 1802, and to confer them and the property acquired under them upon a new and different corporation. A power to *alter* the constitution of the college is not a power to *revoke* and *destroy* it. A right to alter is consistent with the perpetual existence of the college.* Such a provision is only intended to meet those altered conditions of society and pursuits whereby a strict adherence to all the formal requirements of a foundation might defeat its object.

2. But, conceding that the reserved power to alter is equivalent to a power to revoke, and that a power to modify is the same thing with a power to terminate and destroy, and that the exercise of such a reserved power might be valid, as between the college and the State, still it is invalid and unconstitutional so far as third parties holding contracts affected by it, are concerned. It is apparent, upon the face of the contracts held by the complainants, that they did not contemplate the contingency of a legislative subversion of their obligation. It may be said indeed holders were bound to know that the legislature might exercise its reserved power; but this is a begging of the question. It is true, they were bound to know the reserved power of the legislature; but they also had knowledge of the limits of legislative power, and the restraints imposed by the Constitution of the United States for the guarantee and protection of contracts, and that the obligation of contracts were sacred and beyond the reach of legislative action.

In *Oldtown and Lincoln Railroad Company* v. *Veazie*,† the charter required that not less than eleven thousand shares should be subscribed before the subscription could be enforced by calls. The defendant subscribed for one thousand shares. Only nine thousand five hundred shares were subscribed in all. A supplemental act was then passed, reducing the limits to eight thousand shares. It was held that the re-

* Allen *v.* McKeen, *supra*, p. 204; Sage *v.* Dillard, 15 Ben. Monroe, 340.

† 39 Maine, 571; and see Commonwealth *v.* The Essex Company, 13 Gray, 239; Durfee *v.* Old Colony Railroad, 3 Allen, 230.

served power to amend the charter did not authorize a change in the liability of the stockholders as between themselves.

Messrs. J. A. Wills and J. S. Black, contra:

The people of Canonsburg are the real complainants here; and three suits instead of one, it is understood by all, have been brought only that the chances of success may be increased by an adoption of various forms of presenting the case. Waiving technical matters—such as the obvious and conclusive one in the second suit, that there is now no such corporation as the old Jefferson College at Canonsburg, and therefore no such complainant in existence as sues in that case—we go at once to merits. All the cases alike present as their strongest feature—and their only feature—with even apparent strength the arrangement about the scholarships. They all set up a contract, and the obligation of it impaired. There is no other case.

Now the case is in *equity;* the parties ask for that which is conscionable. Such parties must have a good case in conscience themselves. But on what do they stand as their very best ground? On certain alleged contracts (of which they have had the benefit since 1853), whereby four years of instruction, including that of the preparatory department, at a respectable college is demanded for the annual interest of $50, say $3 a year; a *family* scholarship, for an indefinite number of boys, for four or five years each, for the interest of $100, say $6 a year; a perpetual scholarship, for the interest of $400, say $24 a year; a scholarship in full, entitling the holder to the tuition, room-rent, and boarding of one student in perpetuity, for the interest of $1200, say $72 a year. In point of fact, as must be obvious to all, this plan of endowment was really expected by the college to bring to it that which should be gifts. An apparent equivalent was professed to be returned as a graceful mode of asking, and that the college might not appear a mendicant. Certainly the trustees never expected that—unless exceptionally, and in cases where gratuitous education would in any event have been given—the contributors to the plan would avail them-

selves rigorously of their part of the matter. It is only the complainants—people of Canonsburg—who have done so. No college could exist on such a scheme actually enforced, as this plan set forth. It is the inequitable exaction by people like the complainants—people of Canonsburg—of what they call their *rights* under these scholarships—that Jefferson College was reduced to a condition that, in order to live at all, it had to seek union with a stronger one. The case then, to begin with, is defective in equity. And on a bill to cancel all the scholarships, a chancellor no doubt, on return of the money and interest, would give the college relief.

But if the case had full equity, how does the case stand? There are here said to be many scholarships outstanding. But the rights would be the same had only a single one been created. Yet can it be that a college by making a single contract of such a kind, puts it beyond both the power of the legislature and of itself, to do that which both may deem vital to the existence of the college, or even to give effect to the contract itself in any form? For the question may be often—as it actually was in regard to Jefferson College—a question between utter extinction and a changed form of existence.

The general right of a private corporation to surrender its franchises must be admitted. There may be some distinctions as respects eleemosynary corporations, but in cases where both corporation and State, that is to say, where grantor and grantee alike consent, the general rule can be qualified only by some plain injury to private right, in the face of what either State or corporation was bound to do.

Now here the charter of 1802 is "alterable," and may be "altered" by the legislature. The power is given in a form elliptical indeed, but abundantly plain. Admit that a power to alter is not a power to destroy, still has there been any destroying here? There is nothing either in the plan of endowment or in the certificate which makes it obligatory to give the promised education at Canonsburg. There is no "contract" that it shall be there. Nor can any one affirm

even that the trustees intended or the contributors, many of whom did not live at Canonsburg, expected that it should always be there. Here were two colleges, put in very early times, in small towns of Western Pennsylvania, within seven miles of each other; with colleges all about the State. Little sagacity is required to see that such doings could have been the fruit of nothing but of temporary village rivalries. From the days of their foundation both colleges languished, and from a short term after those days the court may well believe, what many in that region well know, that a union was contemplated. It has been contemplated these fifty years and more. The difficulty has been how to overcome the local interests, and how to dispose of the supernumerary president and professors. In view of all this—so easily to be apprehended by the court, and so well known to opposing counsel—it cannot be affirmed that it was certainly even so much as *expected* by all that the education was to be forever at Canonsburg. And the absence from the plan of endowment and the certificates given under it of any provision that it should be there, raises a probability that the matter of union was in the minds of both parties concerned. But be that as it may, an expectation is not of necessity a contract, nor the disappointment of one, an infringement of the Constitution. The only contract then is for education, &c. The whole of *that* contract is "imposed" and "assumed," "without diminution or abatement" on, and by the new college created in 1865; saved, therefore, in perfection and identity. What, therefore, the act of 1865 did was not a destruction of the right, but a change "intended to meet those altered conditions of society and pursuits, whereby a strict adherence to all the formal requirements of a foundation might defeat its object," the exact case in which opposing counsel admit that a change in the charter is an alteration and not a destruction. Such control over corporations has always been exercised in Pennsylvania, where there is no court of chancery, by the legislature as *parens patriæ*.

The case of *Daily* v. *The Genesee College* seems to have been a question between the holders of scholarships and the

trustees acting without legislative authority. And *The State* v. *Adams* goes no further than to say that the trustees of a college, even with the sanction of the State, cannot consent to an amendment of the charter of a college, the effect of which is fundamentally to change the objects, purposes, and administration of the trust. To such a doctrine we agree.

The case is thus disposed of. It may be added that the holders of the scholarships do not appear to have made any objection to the act of 1865. With that act they were apparently satisfied. If they were, then the surrender of the charter of Jefferson College, and the acceptance of the new one, was with the assent, in point of fact, of the trustees, the legislature, and the holders of scholarships; in other words, with an assent of every interest in the college. All came voluntarily into the new corporation; a corporation over which by the amended constitution of 1857, the legislature had from the hour of its creation a very large control. The holders of the scholarships are not *corporators*. Independently of which no injustice has been done them. On the contrary, they may get a good education at Washington, instead of getting no education anywhere. For Jefferson College, Canonsburg, was in the article of death, when a new and higher existence was given to it.

Mr. Justice CLIFFORD delivered the opinion of the court.

Jefferson College was incorporated on the fifteenth of January, 1802, by the name of the Trustees of Jefferson College in Canonsburg in the county of Washington, for the education of youth in the learned languages and the arts, sciences, and useful literature. By the charter it was declared that the trustees should be a body politic and corporate, with perpetual succession, in deed and in law, to all intents and purposes whatsoever, and that the constitution of the college "shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner than by an act of the legislature of the Commonwealth."

Washington College was incorporated on the twenty-

eighth of March, 1806, by the name of The Trustees of Washington College for the education of youth in the learned and foreign languages, the useful arts, sciences, and literature, and was located in the town of Washington, seven miles distant from Jefferson College, in the same county.

Experience showed in the progress of events that the interests of both institutions would be promoted in their union, and the friends of both united in a common effort to effect that object. Application was accordingly made to the legislature for that purpose, and on the fourth of March, 1865, the legislature passed the "Act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation under the name of Washington and Jefferson College." Enough is stated in the preamble of the act to show that the application was made to promote the best interests of both institutions, and that the legislative act which is the subject of complaint was passed at their united request and to sanction the union which their respective trustees had previously agreed to establish. Inconveniences resulted from the provisions contained in the thirteenth section of the act, which impliedly forbid any change in the sites of the respective colleges, and also provided that the studies of certain classes of the students should be pursued at each of the two institutions, and to that end prescribed certain rules for appropriating to each certain portions of the income derived from the funds of the institution, and the manner in which the same should be expended and applied by the trustees. Such embarrassments increasing, the legislature passed a supplementary act, providing that the several departments of the two colleges should be closely united, and that the united institution should be located as therein prescribed. Measures were also prescribed in the same act for determining the location of the united institution, and it appears that those measures, when carried into effect, resulted in fixing the location at Washington, in the county of the same name. Certain parties are dissatisfied with the new arrangement, and

Restatement of the case in the opinion.

it appears that, on the twenty-fourth of August, 1869, three bills in equity were filed in the State court, praying that the last-named act of the legislature may be declared null and void as repugnant to the ninth article of the constitution of the State, and to the tenth section of the first article of the Federal Constitution. Different parties complain in each of the several cases, but the subject-matter of the complaint involves substantially the same considerations in all the cases. Those complaining in the first case are the trustees of Jefferson College. Complainants in the second case are certain members of the board of trustees of Washington and Jefferson College, who oppose the provisions of the act of the twenty-sixth of February, 1869, and deny that the board of trustees, even by a vote of two-thirds of the members, as therein required, can properly remove the college or dispose of the college buildings as therein contemplated. Objections are made by the complainants in the last case to both the before-mentioned acts of the legislature, and they claim the right to ask the interposition of the court, upon the ground that they are owners of certain scholarships in Jefferson College, as more fully set forth in the bill of complainant, and they pray that both of the said acts of Assembly may be declared null and void for the same reasons as those set forth in the other two cases.

I. Examination of these cases will be made in the order they appear on the calendar, commencing with the case in which the trustees of Jefferson College are the complainants. They bring their bill of complaint against the two colleges as united, under the first act of Assembly passed for that purpose. Service was made and the respondents appeared and pleaded in bar that the complainants, as such trustees, duly accepted the act of Assembly creating the union of the two institutions, and that having accepted the same they, as a corporation, became dissolved and ceased to exist, and have no authority to maintain their bill of complaint. Apart from the plea in bar they also filed an answer, but as the whole issue is presented in the plea in bar it will not be necessary to enter into those details. Opposed to that plea

is the replication of the complainants, in which they deny the allegation that they, as a corporation, became dissolved or that they ceased to exist as alleged in the plea in bar, and renew their prayer for relief. Both parties were heard, and the Supreme Court of the State entered a decree for the respondents, dismissing the bill of complaint. Decrees for the respondents were also entered in the other two cases, and the respective complainants sued out writs of error under the twenty-fifth section of the Judiciary Act, and removed the respective causes into this court for re-examination.

Whether the act of Assembly in question in this case is or not repugnant to the constitution of the State is conclusively settled against the complainants by the decision in this very case, and the question is not one open to re-examination in this court, as it is not one of Federal cognizance in a case brought here by a writ of error to a State court. Nothing, therefore, remains to be examined but the second question presented in the pleadings, which is, whether the supplementary act of Assembly uniting the two institutions and providing that there should be but one location of the same for any purpose, impairs the obligation of the contract between the State and the corporation of Jefferson College, as created by the original charter; or, in other words, whether it is repugnant to the tenth section of the first article of the Federal Constitution.

Corporate franchises granted to private corporations, if duly accepted by the corporators, partake of the nature of legal estates, as the grant under such circumstances becomes a contract within the protection of that clause of the Constitution which ordains that no State shall pass any law impairing the obligation of contracts.* Charters of private corporations are regarded as executed contracts between the government and the corporators, and the rule is well settled that the legislature cannot repeal, impair, or alter such a

* Dartmouth College *v.* Woodward, 4 Wheaton, 700.

charter against the consent or without the default of the corporation judicially ascertained and declared.* Of course these remarks apply only to acts of incorporation which do not contain any reservations or provisions annexing conditions to the charter modifying and limiting the nature of the contract. Cases often arise where the legislature, in granting an act of incorporation for a private purpose, either make the duration of the charter conditional or reserve to the State the power to alter, modify, or repeal the same at pleasure. Where such a provision is incorporated in the charter it is clear that it qualifies the grant, and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the Constitution. Such a power also, that is the power to alter, modify, or repeal an act of incorporation, is frequently reserved to the State by a general law applicable to all acts of incorporation, or to certain classes of the same, as the case may be, in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition nor any allusion to such a reservation.† Reservations in such a charter, it is admitted, may be made, and it is also conceded that where they exist the exercise of the power reserved by a subsequent legislature does not impair the obligation of the contract created by the original act of incorporation. Subsequent legislation altering or modifying the provisions of such a charter, where there is no such reservation, is certainly unauthorized if it is prejudicial to the rights of the corporators, and was passed without their assent, but the converse of the proposition is also true, that if the new provisions altering and modifying the charter were passed with the assent of the corporation and they were duly accepted

* Fletcher *v.* Peck, 6 Cranch, 136; Terrett *v.* Taylor, 9 Id. 51.

† Dartmouth College *v.* Woodward, 4 Wheaton, 708; General Hospital *v.* Insurance Co., 4 Gray, 227; Suydam *v.* Moore, 8 Barbour, 358; Angel & Ames on Corporations (9th ed.), § 767, p. 787.

by a corporate vote as amendments to the original charter, they cannot be regarded as impairing the obligation of the contract created by the original charter.* Private charters or such as are granted for the private benefit of the corporators are held to be contracts because they are based for their consideration on the liabilities and duties which the corporators assume by accepting the terms therein specified, and the grant of the franchise on that account can no more be resumed by the legislature or its benefits diminished or impaired without the assent of the corporators than any other grant of property or legal estate, unless the right to do so is reserved in the act of incorporation or in some general law of the State which was in operation at the time the charter was granted.†

Apply those principles to the case under consideration and it is quite clear that the decision of the State court was correct, as the fifth section of the charter, by necessary implication, reserves to the State the power to alter, modify, or amend the charter without any prescribed limitation. Provision is there made that the constitution of the college shall not be altered or alterable by any ordinance or law of the trustees, "nor in any other manner than by an act of the legislature of the Commonwealth," which is in all respects equivalent to an express reservation to the State to make any alterations in the charter which the legislature in its wisdom may deem fit, just, and expedient to enact, and the donors of the institution are as much bound by that provision as the trustees.‡

* Mumma *v.* Potomac Co., 8 Peters, 286; Dartmouth College *v.* Woodward, 4 Wheaton, 712; Slee *v.* Bloom, 19 Johnson, 474; Riddle *v.* Locks and Canals, 7 Massachusetts, 185; McLaren *v.* Pennington, 1 Paige's Chancery, 107; Lincoln *v.* Kennebec Bank, 1 Greenleaf, 79; Navigation Co. *v.* Coon, 6 Pennsylvania State, 379; Com. *v.* Cullen, 13 Id. 133; Sprague *v.* Railroad, 19 Id. 174; Joy *v.* Jackson Co., 11 Michigan, 155.

† Cooley on Constitutional Limitations, 279; Binghamton Bridge Case, 3 Wallace, 51; Piqua Bank *v.* Knoop, 16 Howard, 369; Vincennes University *v.* Indiana, 14 Howard, 268; Planters' Bank *v.* Sharp, 6 Id. 301.

‡ Railroad *v.* Dudley, 14 New York, 354; Plank Road *v.* Thatcher, 1 Kernan, 102.

Suppose, however, the fact were otherwise, still the respondents must prevail, as it is admitted that the complainants accepted the act passed to unite the two colleges and to erect the same into one corporation, which supports to every intent the respondents' plea in bar and utterly disproves the allegations of the complainants' replication denying that the complainant corporation was dissolved before their bill of complaint was filed. Doubts have often been expressed whether a private corporation can be dissolved by the surrender of its corporate franchise into the hands of the government, but the question presented in this case is not of that character, as the act of the legislature uniting the two colleges did not contemplate that either college as an institution of learning should cease to exist, or that the funds of either should be devoted to any other use than that described in the original charters. All that was contemplated by the act in question was that the two institutions should be united in one corporation, as requested by the friends and patrons of both, that they might secure greater patronage and be able to extend their usefulness and carry out more effectually the great end and aim of their creation. Authorized as the act of the legislature was by the reservation contained in the original charter, and sanctioned as the act was by having been adopted by the corporators, it is clear to a demonstration that the act uniting the two colleges was a valid act, and that the two original corporations became merged in the one corporation created by the amendatory and enabling act passed for that purpose, and that neither of the original corporations is competent to sue for any cause of action subsequent in date to their acceptance of the new act of incorporation.*

II. Sufficient has already been remarked to show that the case of the dissenting trustees of the new corporation, which is the second case, is governed by the same principles as the preceding case. They admit that the act of the legislature

* Revere *v.* Copper Co., 15 Pickering, 351; Attorney-General *v.* Clergy Society, 10 Richardson's Equity, 604.

uniting the two colleges in one corporation was duly accepted by the original corporators, and they also admit in effect that it is a valid law. Express provision was therein made that the two colleges should be united in one corporation by the name of Washington and Jefferson College, and that the new corporation should possess and enjoy all the capacities, powers, privileges, immunities, and franchises which were possessed and enjoyed by the original institutions and the trustees thereof, "with such enlargements and subject to such changes therein as are made by this act." Accepted as that act was by the trustees of the original institutions, they not only ratified the reservation contained in the fifth section of the charter of Jefferson College, but they in express terms adopted the changes made in the amended charter uniting the two institutions in one corporation.

Viewed in the light of these suggestions the present case stands just as it would if the reservation contained in the original charter had been in terms incorporated into the new charter uniting the two institutions into one corporation, which the complainants in this case admit is a valid act of the legislature. Such an admission, however, is not necessary to establish that fact, as the act was passed by the assent of the two corporations and in pursuance of the reserved power to that effect contained in the original charter of the corporation to which the complaining corporators in the preceding case belonged. Grant that the power existed in the legislature to pass the act uniting the two institutions and it follows that the supplementary act which was passed to render the first act practically available is also a rightful exercise of legislative authority, as it is clear that substantially the same reservation is contained in the act providing for the union of the two institutions as that contained in the original charter by virtue of which the act was passed uniting the two institutions in one corporation.* Tested by these considerations the court here is of the opinion that

* Bailey *v.* Hollister, 26 New York, 112; Sherman *v.* Smith, 1 Black, 587.

the decision of the State court in the second case is also correct.

III. Plans of various kinds were devised by the trustees of Jefferson College and put in operation for the endowment of the institution; and, among others, was the plan of establishing what was called the scholarships, whereby a contributor on payment of twenty-five dollars became entitled to tuition for one person for a prescribed period, called a right to a single scholarship; or, on payment of fifty dollars, to a family scholarship; or, on payment of one hundred dollars, to tuition for thirty years; or, on payment of four hundred dollars, to a perpetual scholarship, to be designated by whatever name the contributor might select. Contracts of the kind were outstanding at the respective times when each of the two acts of the legislature in question was passed, and the complainants in the third case are owners of such scholarships, and they bring their bill of complaint, for themselves and such other persons owning such scholarships as may desire to unite in the bill for the relief therein prayed. They pray that both of the before-mentioned acts of the legislature may be declared null and void as repugnant both to the State and Federal Constitution, but it will be sufficient to remark, without entering into any further explanations, that the second question is the only one which can be re-examined in this court. What they claim is that the acts of the legislature in question impair the obligation of their contracts for scholarship as made with the trustees of Jefferson College before the two institutions were united in one corporation. Reference must be made to the charter creating the union as well as to the original charters in order to ascertain whether there is any foundation for the allegations of the bill of complaint.

By the first section of the act creating the union it is provided that the new corporation "shall possess and enjoy all the capacities, powers, privileges, immunities, and franchises which were conferred upon and held by said colleges of Jefferson and Washington and the trustees thereof, with such enlargements and subject to such changes therein as are

made by this act." Section two also provides that all the real and personal property held and possessed by or in trust for the said colleges, with all endowment funds, choses in action, stocks, bequests, and devises, and all other rights whatever to them belonging, are thereby transferred to and vested in the new corporation; and the further provision is that "all the several liabilities of said two colleges or corporations, by either of them suffered or created, including the scholarships heretofore granted by and obligatory upon each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same without diminution or abatement."

Undoubtedly the corporate franchises of the two institutions were contracts of the description protected by that clause of the Constitution which ordains that no State shall pass any law impairing the obligation of contracts, but the contract involved in such an act of incorporation is a contract between the State and the corporation, and as such the terms of the contract may, as a general rule, be altered, modified, or amended by the assent of the corporation, even though the charter contains no such reservation and there was none such existing in any general law of the State at the time the charter was granted. Persons making contracts with a private corporation know that the legislature, even without the assent of the corporation, may amend, alter, or modify their charters in all cases where the power to do so is reserved in the charter or in any antecedent general law in operation at the time the charter was granted, and they also know that such amendments, alterations, and modifications may, as a general rule, be made by the legislature with the assent of the corporation, even in cases where the charter is unconditional in its terms and there is no general law of the State containing any such reservation. Such contracts made between individuals and the corporation do not vary or in any manner change or modify the relation between the State and the corporation in respect to the right of the State to alter, modify, or amend such a charter,

as the power to pass such laws depends upon the assent of the corporation or upon some reservation made at the time, as evidenced by some pre-existing general law or by an express provision incorporated into the charter. Cases arise undoubtedly where a court of equity will enjoin a corporation not to proceed under an amendment to their charter passed by their assent, as where the effect would be to enable the corporation to violate their contracts with third persons, but no such question is here presented for the decision of this court, nor can it ever be under a writ of error to a State court. Questions of that kind are addressed very largely to the judicial discretion of the court and create the necessity for inquiry into the facts of the case and for an examination into all the surrounding circumstances.* Beyond doubt such a question may be presented in the Circuit Court in the exercise of its jurisdiction, concurrent with the State courts, but it is clear that such a question can never be brought here for re-examination by a writ of error to a State court, as such a writ only removes into this court the questions, or some one of the questions, described in the twenty-fifth section of the Judiciary Act.† Considerations of that kind must, therefore, be dismissed, as the only question presented for decision is whether the acts of the legislature mentioned in the bill of complaint impair the obligation of the contracts for scholarship made by the complainants with the trustees of Jefferson College.

Decided cases are referred to in which it is held that the trustees of such an institution, where the terms of the charter amount to a contract and the charter contains no reservation of a right to alter, modify, or amend it, cannot consent to any change in the charter made by the legislature, which contemplates a diversion of the funds of the institution to any other purpose than that described and declared in the original charter. All, or nearly all of such decisions are based on a state of facts where an attempt was made to take

* Hascall *v.* Madison University, 8 Barbour, 174.

† Ward *v.* The Society of Attorneys, 1 Collyer Chancery Cases, 377.

the control of such an institution from one religious sect or denomination and to give the control of it to another and a different sect or denomination, in violation of the intent and purpose of the original donors of the institution.* Questions of that kind, however, are not involved in the present record, nor do the court intend to express any opinion in respect to such a controversy. Charters of the kind may certainly be altered, modified, or amended in all cases where the power to pass such laws is reserved in the charter or in some antecedent general law, nor can it be doubted that the assent of the corporation is sufficient to render such legislation valid, unless it appears that the new legislation will have the effect to change the control of the institution, or to divert the fund of the donors to some new use inconsistent with the intent and purpose for which the endowment was originally made.† Consent of the corporation, it is conceded, is sufficient to warrant alteration, modification, and amendments in the charters of moneyed, business, and commercial corporations, and it is not perceived that the question presented in this record stands upon any different footing from such as arise out of legislation of that character, as the principal objection to the legislation in question is that the removal of Jefferson College to the newly selected location exposes the complainants, as owners of the scholarships, to increased expense and to additional inconvenience.‡ They do not pretend that the effect of the new legislation will be to lessen the influence and usefulness of the college, or to divert the funds to a different purpose from that which was intended by the donors, nor that it will have the effect to change the character of the institution from the original purpose and design of its founders. Pretences of the kind, if set up, could not be supported, as the whole record shows that the two acts of Assembly were passed at the earnest solicitation of the patrons of the two institutions as well as at the request of the respective boards of trustees.

* State *v.* Adams, 44 Missouri, 570.

† Railroad *v.* Canal Co., 21 Pennsylvania State, 22.

‡ Allen *v.* McKeen, 1 Sumner, 299.

Even suppose that the consent of the corporation is no answer to the objections of the complainants, still the decree of the State court must be affirmed, as it is clear that the reservation in the charter fully warranted the legislature in passing both the acts which are the subject of complaint.* Suggestion may be made that the reservation even in the original charter is not expressed in direct terms, but the terms are the same as those employed in the charter which was the subject of judicial examination in the case of *Commonwealth* v. *Bonsall et al.*,† which was decided more than thirty years ago by the Supreme Court of the State. Provision was made in the charter in that case that the constitution of a certain public school should not be altered or alterable by any law of the trustees, or in any other manner than by an act of the legislature of this State. When incorporated the charter of the school provided that the trustees should be chosen by such persons as had contributed or should contribute to the amount of forty shillings for the purposes of the corporation. Pursuant to the petition of the trustees the legislature passed an act which repealed that clause of the charter, and provided that all the citizens residing within the limits of the township should be entitled to vote at all such elections, and the Supreme Court of the State held unanimously that the act of Assembly was a valid act, even though it was not accepted by the corporation. Reference is made to that case to show that the clause in the charter of Jefferson College, called the reservation, furnished complete authority to alter, modify, or amend the charter, and certainly it must be conceded that that case is a decisive authority to that point.‡

Controlled by these reasons the court is of the opinion that the act uniting the two colleges in one corporation was a valid act even as against the complainants in the third case.

* People *v.* Manhattan Co., 9 Wendell, 351; Roxbury *v.* Railroad Co., 6 Cushing, 424; White *v.* Railroad, 14 Barbour, 559.

† 3 Wharton, 566.

‡ State *v.* Miller, 2 Vroom, 521; Story *v.* Jersey City et al., 1 C. E. Green, N. J., 13.

They complain also of the supplementary act, but they hardly contend that the legislature, in passing the act to unite the two institutions, parted with any power which was reserved in the original charter of Jefferson College to enact any proper law to alter, modify, or amend the act providing for that union. Extended argument upon that topic does not seem to be necessary, as there is not a word in the act which favors such a construction or which gives such a theory the slightest support. Proper care was taken by the legislature to protect the rights of these complainants by incorporating into the act uniting the two colleges a provision that the new corporation should discharge and perform those liabilities without diminution or abatement. Such contracts were made with the trustees and not with the State, and it is a mistake to suppose that the existence of such a contract between the corporation and an individual would inhibit the legislature from altering, modifying, or amending the charter of the corporation by virtue of a right reserved to that effect, or with the assent of the corporation, if, in view of all the circumstances, the legislature should see fit to exercise that power.

DECREE IN EACH CASE AFFIRMED.

INSURANCE COMPANY v. WILKINSON.

1. The assured, in a life policy in reply to the question, "had she ever had a serious personal injury," answered "no." She had, ten years before, fallen from a tree. The criteria of a serious personal injury considered.
2. This is not to be determined exclusively by the impressions of the matter at the time; but its more or less prominent influence on the health, strength, and longevity of the party is to be taken into account, and the jury are to decide from these and the nature of the injury whether it was so serious as to make its non-disclosure avoid the policy.
3. Insurance companies who do business by agencies at a distance from their principal place of business are responsible for the acts of the agent within the general scope of the business intrusted to his care, and no limitations of his authority will be binding on parties with whom he deals which are not brought to their knowledge.